



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-18/56962

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on April 29, 2003, at Eau Claire, Wisconsin.

The issue for determination is whether a greater portion of petitioner's income should be "allocated" (disregarded) under Spousal Impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Steve Tilbury, ESS
Eau Claire County Dept Of Human Serv
721 Oxford Avenue
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Louis H. Dunlap

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Eau Claire County who is certified for Medical Assistance (MA) as an institutionalized person.
2. Petitioner's total monthly income is \$3807.49; his wife, who lives in the community, has no income. Under the MA program, \$2266.50 of petitioner's income is allocated to his wife each month, with the remainder of the income, aside from a \$45 statutory personal allowance, going toward his cost of care in the nursing home.

3. This appeal was filed seeking to increase the amount of petitioner's income that is allocated to his wife, thus reducing his cost of care contribution.
4. The listing of petitioner's wife's expenditures that was submitted at hearing is inadequate to determine whether a change in the income allocation is warranted.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, that allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2266.50. See *MA Handbook*, Appendix 23.6.0).

In this case, the income of the community spouse is zero. The income of the institutionalized spouse is \$2575.49 per month (pension) and \$1232 per month (Social Security) for monthly total income of \$ 3807.49. With the allocation of \$2266.50 to the community spouse, the petitioner's monthly cost of care is approximately \$1500. The assertion at hearing was that the present allocation of income to the community spouse was insufficient given her monthly expenses and that she therefore was forced to pay petitioner's cost of care from her savings, which would result in their total depletion.

The community spouse presented a record of her actual total expenditures by categories for the first four months of 2003, and a list of projected expenses for the remaining eight months. Therefore, I converted the actual four months of expenditures into monthly figures by categories and did the same for the projected amounts. The first four months totaled \$6596.12 or \$1649.03 per month. The projected amount for eight months was \$ 4751.45. Converted to a monthly basis this is \$ 593. 93. Thus the total of the monthly expenses she presented is \$ 2242. 96. Since this is less than the minimum monthly income allowance of \$2266.50, she would not be entitled to any additional amount of petitioner's income.

However, the assertion of the community spouse at hearing that she was spending her savings on her husband's cost of care seemed sincere and was backed up by the county agency worker. I therefore tried to figure out "what was wrong with this picture".

At first blush I thought the list of actual expenses for four months and projection for eight months was detailed and helpful. On further examination, however, there are large holes in the expenses reported. They include, for example, the actual cost for food, gasoline, oil changes and medical costs as well as many amounts for "gifts", "books" and "Tia Chi" ("Tai Chi"?), but they do not include any figures for car insurance, home insurance, real estate taxes, utility payments and so on, that I must presume are obligations of the community spouse. I can only conclude, therefore, that the numbers presented are completely useless for the purpose of determining whether an increase in the income allocation should be allowed. I must therefore dismiss the petition for review. Nothing prevents the petitioner from again requesting a hearing and presenting more useful and accurate numbers.

I note that if there is another hearing request, the community spouse must keep in mind that the income allocation may be increased by a hearing examiner only where there is a showing that this is necessary to avert “financial duress” created by “exceptional circumstances”. Wis. Stat. § 49.455(8)(d). No exceptional circumstances were asserted here. Furthermore, the list of expense submitted included items that are not considered basic and necessary living expenses, such as “gifts” in the amount of \$700 over eight months and charity donations. Since MA is basically a low income safety net program, a community spouse seeking an increase in the income allocation for gifts and charity is asking the taxpayers to subsidize such things. Thus these amounts would not be considered by a hearing examiner.

CONCLUSIONS OF LAW

Insufficient evidence was submitted to allow a determination as to whether the community spouse’s income allocation may be increase above the statutory maximum.

NOW, THEREFORE, it is **ORDERED**

That the matter is hereby DISMISSED,

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.”

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 21st day of
May, 2003

/s/Louis H. Dunlap
Administrative Law Judge
Division of Hearings and Appeals
86/LHD